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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/807,557	03/23/2004	Albert H. M. Reinhardt	073338.0186 (04-50460 FLA	4267
5073	7590	07/20/2007	EXAMINER	
BAKER BOTTS L.L.P. 2001 ROSS AVENUE SUITE 600 DALLAS, TX 75201-2980			LIANG, REGINA	
			ART UNIT	PAPER NUMBER
			2629	
			NOTIFICATION DATE	DELIVERY MODE
			07/20/2007	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No. 10/807,557	Applicant(s) REINHARDT ET AL.	
	Examiner Regina Liang	Art Unit 2629	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 and 8-21 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-6, 8-21 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

1. The finality of last action is withdrawn.

Double Patenting

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 1-6, 8-21 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-21 of U.S. Patent No. 7,180,501. Although the conflicting claims are not identical, they are not patentably distinct from each other because they are obvious over each other.

The following is an example for comparing claim 1 of this application and claim 1 of U.S. Patent No. 7,180,501.

claim 1 of this application	claim 1 of U.S. Patent No. 7,180,501
A motion controlled handheld device	A motion controlled handheld device

comprising: a display having a viewable surface and operable to generate a current image;	comprising: a display having a viewable surface and operable to generate a current image;
a motion detection module operable to detect motion of the device within three dimensions and to identify components of the motion in relation to the viewable surface, the components comprising a first component parallel to the viewable surface, a second component parallel to the viewable surface and perpendicular to the first component, and a third component perpendicular to the viewable surface;	a motion detection module operable to detect motion of the device within three dimensions and to identify components of the motion in relation to the viewable surface;
a display control module operable to display a cursor on the viewable surface, to determine a translation vector that is substantially opposite to the sum of the first component and the second component, and to translate the cursor across the viewable surface according to the translation vector in order to substantially maintain the position of the cursor in space with respect to the viewable surface;	

a gesture database comprising a plurality of gestures, each gesture defined by a motion of the device with respect to a first position of the device;	a gesture database comprising a plurality of gestures, each gesture defined by a motion of the device with respect to a first position of the device, the gestures comprising at least four planar gestures each defined by a motion vector generally aligned in parallel with the viewable surface;
a gesture mapping database mapping each of the gestures to a corresponding command;	a gesture mapping database mapping each of the gestures to a corresponding command, the gesture mapping database mapping each of the four planar gestures to a corresponding grid navigation command;
a motion response module operable to identify a matching one of the gestures based on the motion and to determine a corresponding one of the commands based on the identified gesture; and	a motion response module operable to identify a matching one of the planar gestures based on the motion and to determine the corresponding one of the grid navigation commands based on the identified planar gesture;
wherein the display control module is further operable to logically parse a viewable image into a plurality of grid sections, to set one of the grid sections as the current image, and to set another one of the grid sections as the	and a display control module operable to logically parse a viewable image into a plurality of grid sections, to set one of the grid sections as the current image, and to set another one of the grid sections as the current

current image in response to the determined command.	image in response to the determined grid navigation command.
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As can be seen above, claim 1 of U.S. Patent No. 7,180,501 differs from claim 1 of this application in not having a first and second components and the display control module operable to display a cursor on the viewable surface, to determine a translation vector that is substantially opposite to the sum of the first component and the second component, and to translate the cursor across the viewable surface according to the translation vector in order to substantially maintain the position of the cursor in space with respect to the viewable surface. However, the patent claims are in comprising format and therefore cover structure not specifically recited. The patent disclosure clearly describes the first and second components, and the display control module operable to display a cursor on the viewable surface and are encompassed by the patent claims comprising format.

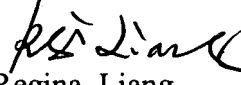
In view of the above analysis, applicant's claim 1 and patent claim 1 are not patentably distinct from one another and in the absence of a terminal disclaimer would result in an unjustifiable time wise extension of applicant patent.

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Regina Liang whose telephone number is (571) 272-7693. The examiner can normally be reached on Monday-Friday from 8AM to 5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Hjerpe, can be reached on (571) 272-7691. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 2629

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Regina Liang
Primary Examiner
Art Unit 2674

7/11/07